

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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METALLICA COMMODITIES CORP.,

Plaintiff,

v.

ORLAN M. JOHNSON,

Defendant.

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) Case No. 18-10445  
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**COMPLAINT**

Plaintiff Metallica Commodities Corp. (“Metallica”), for its Complaint against Orlan M. Johnson (“Johnson”), states and alleges as follows:

**NATURE OF THE ACTION**

1. This action (“Action”) arises from the nonpayment at maturity and resulting default of a Secured Promissory Note dated August 10, 2017, in the original principal amount of \$628,000.00 (the “Note”) issued by Defendant Johnson and payable to the order of Metallica. A true and correct copy of the Note is attached hereto as Exhibit A.

**THE PARTIES**

2. Metallica is a corporation duly organized and existing under the laws of the state of New York, with its principal place of business located at 222 Bloomingdale Road, White Plains, New York 10605.

3. Johnson is an individual residing in the State of Maryland at 14216 Dunwood Valley Drive, Bowie, Maryland 20721.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this Action pursuant to 28 U.S.C. § 1332, as Metallica and Johnson are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

5. Jurisdiction over Johnson is proper by virtue of his contractual agreement that any judicial proceeding brought by Metallica with respect to the Note “shall be brought only in a federal or state court located in the City of New York.” Ex.A § 11.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and because Johnson is subject to personal jurisdiction in this district.

### **BACKGROUND FACTS**

7. On or about August 10, 2017, Johnson executed and delivered the Note to Metallica. Pursuant to the Note, Johnson promised to pay Metallica the principal sum of \$628,000.00, plus all other amounts due and payable under the terms of the Note.

8. Pursuant to the Note, interest (computed on the basis of the actual number of days elapsed in a 360 day year) accrues on the unpaid principal amount of the Note, commencing on August 10, 2017, at the Prime Rate (as defined in the Note) plus five percent (5%) per annum (the “Interest Rate”). Ex. A § 3(b). Upon and during the continuance of an Event of Default, interest accrues at the Interest Rate plus ten percent (10%). Ex. A § 3(b).

9. As security for the payment and performance of all of his obligations, liabilities and indebtedness due under the Note, Johnson assigned, pledged and granted to Metallica, under Article 9 of the Uniform Commercial Code, a continuing security interest in and lien on all right, title and interest of Johnson in all of his assets and property, as more specifically described in the Note (the “Collateral”). Ex. A § 6.

10. Metallica's security interest in the Collateral was duly perfected by that certain UCC-1 Financing Statement filed on February 7, 2018 with the Maryland Department of Assessments and Taxation as File Number 180207-1044001, as amended by the filing of a UCC-3 Financing Statement Amendment on March 22, 2018 with the Maryland Department of Assessments and Taxation as File Number 180322-1539000. True and correct copies of the UCC-1 Financing Statement and the UCC-3 Financing Statement are attached hereto as composite Exhibit B.

11. All principal under the Note was required to be paid on or before August 31, 2017. Ex. A § 3(a). Johnson failed and refused to pay all principal under the Note as and when due.

12. The failure to make any payment when due under the Note constitutes an Event of Default under the Note. Ex. A § 5(a). Accordingly, Johnson's failure and refusal to pay all principal under the Note on or before August 31, 2017 constitutes an Event of Default under the Note.

13. Upon the occurrence of an Event of Default under the Note, and without notice or demand, the unpaid principal balance under the Note, and any other amounts due under the Note, automatically became due and payable in full. Ex. A § 4(a).

14. Notwithstanding the maturity of the Note and the occurrence of an Event of Default under the Note, Johnson has failed and refused to pay the unpaid principal balance, or any other amounts due under the Note, as and when due and payable under the terms of the Note. As of November 9, 2018, the principal amount due and payable under the Note is \$587,600.00, and the accrued interest due and payable under the Note is \$81,905.06.

15. Pursuant to the Note, upon the occurrence of an Event of Default under the Note or after demand for payment, Metallica has the right to exercise any and all rights and remedies provided for under the Note, under the Uniform Commercial Code as in effect in the states of New York and Maryland, and at law or equity generally, including the right to foreclose the security interests granted under the Note and to realize upon any Collateral by any available judicial procedure and/or to take possession of and sell any or all of the Collateral with or without judicial process. Ex. A § 4(b).

16. Under the Note, Johnson agreed to indemnify, defend, and hold Metallica harmless from and against any and all damages, costs, expenses and liability that may be incurred by Metallica with respect to the transactions contemplated by or relating to the Note. Metallica has incurred and will incur damages, costs, expenses and liability relating to the Note, including reasonable attorneys' fees and expenses incurred in connection with its efforts to enforce its rights and remedies under the Note.

**COUNT ONE – BREACH OF CONTRACT – DEFAULT UNDER PROMISSORY NOTE**

17. Metallica repeats and incorporates the allegations set forth in paragraphs 1 through 16 of this Complaint as if set forth fully herein.

18. On or about August 10, 2017, Johnson executed and delivered the Note to Metallica.

19. Metallica is the owner and holder of the Note.

20. Johnson failed and refused to pay the amounts due and payable under the Note on August 31, 2017, or at any time thereafter.

21. An Event of Default has occurred under the Note.

22. As of November 9, 2018, the principal amount due and payable under the Note is \$587,600.00, and the accrued interest due and payable under the Note is \$81,905.06. Interest continues to accrue under the Note in accordance with its terms.

23. As a result of Johnson's material breaches of the terms of the Note, Metallica has been damaged in an amount not less than all amounts due and owing under the Note, including without limitation the unpaid principal amount of the Note, all accrued and unpaid interest thereon, and all other liabilities of Johnson under the Note, including without limitation all reasonable attorneys' fees, expenses and other costs of collection incurred by Metallica.

#### **COUNT TWO – ENFORCEMENT OF SECURITY INTEREST**

24. Metallica repeats and incorporates the allegations set forth in paragraphs 1 through 23 of this Complaint as if set forth fully herein.

25. Pursuant to section 6 of the Note, Johnson assigned, pledged and granted to Metallica a security interest in and lien on all right, title and interest of Johnson in the Collateral.

26. Johnson's failure to pay all amounts under the Note as and when due and payable constitutes an Event of Default under the Note.

27. Upon the occurrence of an Event of Default under the Note, Metallica is entitled to exercise any and all rights and remedies provided for under the Note, including the right to foreclose the security interests granted under the Note and to take possession of and dispose of any or all of the Collateral.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Metallica Commodities Corp. prays for relief as follows:

A. Entry of judgment in favor of Metallica Commodities Corp. and against Orlan M. Johnson for damages in the principal amount of \$587,600.00, interest in the amount of \$81,905.06 as of November 9, 2018, all other interest, fees, costs and other amounts owed under the Note, including Metallica Commodities Corp.'s attorneys' fees and expenses and costs of suit;

B. Entry of judgment in favor of Metallica Commodities Corp. and against Orlan M. Johnson determining that Metallica Commodities Corp. is entitled to foreclose the security interests granted under the Note and to take possession of and dispose of any or all of the Collateral; and

C. For such other and further relief as is just and appropriate.

New York, New York  
Dated: November 9, 2018

BLANK ROME LLP  
*Attorneys for Plaintiff*

*/s/ Evan J. Zucker*

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